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TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Public Redacted Version “Yekatom Defence Response to ‘Prosecution’s Request for the Formal Submission of the Prior Recorded Testimony of P-1528 pursuant to Rule 68(3)’, ICC-01/14-01/18-1266-Conf” 14 February 2022,
ICC-01/14-01/18-1280-Conf**

Source: Defence for Mr. Alfred Rombhot Yekatom

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom ('Defence') hereby responds to the 'Prosecution's Request for the Formal Submission of the Prior Recorded Testimony of P-1528 pursuant to Rule 68(3)'¹ ('Request').
2. The Request should be denied. P-1528's witness statements of March 2017² and January 2020³ (respectively, First Statement and Second Statement; collectively, 'Statements') contain extensive allegations relating to disputed issues and central to core issues to this case, many of which are expressly relied upon by the Prosecution. Despite their prejudicial nature, the probative value of much of the P-1528's evidence is negatively impacted by multiple factors. These include the fact that the Statements are affected by P-1528's bias, not least given that P-1528 is himself a [REDACTED], which has actively engaged in clashes with the Anti-Balaka. Lastly, the estimated two hours of in-court time that would be saved by the introduction of the Statements is negligible, and in any event do not outweigh the prejudicial effect of the latter.

APPLICABLE LAW

3. Rule 68(3) of the Rules of Procedure and Evidence ('Rules') states:

If the witness who gave the previously recorded testimony is present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony if he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.

4. A Chamber must carry out an individual assessment of the evidence sought to be introduced under Rule 68(3), based on the circumstances of each case, which includes analysing the importance of this evidence in light of the charges and

¹ [ICC-01/14-01/18-1266-Conf.](#)

² [CAR-OTP-2048-0757-R05.](#)

³ [CAR-OTP-2121-2831-R01.](#)

other evidence presented or intended to be presented; this assessment is part and parcel of the analysis a Chamber must undertake in determining whether it is not prejudicial to or inconsistent with the rights of the accused or with the fairness of the trial generally, to allow for the evidence in question to be introduced under Rule 68 (3).⁴

5. In conducting this analysis, a Chamber may take into account a number of factors, including the following: (i) whether the evidence relates to issues that are not materially in dispute; (ii) whether that evidence is not central to core issues in the case, but only provides relevant background information; and (iii) whether the evidence is corroborative of other evidence.⁵

SUBMISSIONS

I. The Statements go to materially disputed issues and are central to core issues in the case.

6. The Statements are relied on extensively by the Prosecution for a range of disputed and central allegations relating to Mr Yekatom's acts and conduct, to the facts underlying the charges, and to the contextual 'organisational policy' element under Article 7.
7. First, the First Statement contains allegations going to the charged acts and conduct of Mr Yekatom. Specifically, the Prosecution relies on P-1528's disputed claim that Mr Yekatom 'was controlling the Anti-Balaka in CATIN [sic], BOEING, and all the way to BIMBO,'⁶ in support of the charged essential contributions of Mr Yekatom: specifically, his alleged preparation of Anti-

⁴ *Prosecutor v Gbagbo & Blé Goudé*, Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)", [ICC-02/11-01/15-744](#), 1 November 2016 ('Gbagbo & Blé Goudé Judgment'), para. 71.

⁵ *Prosecutor v. Bemba Gombo*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled "Decision on the admission into evidence of materials contained in the prosecution's list of evidence", [ICC-01/05-01/08-1386](#), 3 May 2011, para 78.

⁶ [CAR-OTP-2048-0757-R05](#), para. 50.

Balaka attacks and advances, and his alleged participation and leading of his Group in their execution of the latter.⁷

8. Second, the Statements are relied on by the Prosecution as evidence underlying Counts 1 to 6 and 8⁸ – i.e. the totality of the charges arising from the ‘BANGUI (including CATTIN) and BOEING’ Crime Base.
9. As a preliminary matter it is submitted that, in the Chamber’s assessment of whether the Statements contain allegations that are disputed, central to core issues, and/or corroborated, P-1528’s claims regarding the Anti-Balaka in BOEING and CATTIN must be read alongside his broader claim that Mr Yekatom was ‘in charge of the Anti-Balaka that attacked BOEING on 5 December 2013’ and was ‘controlling’ the Anti-Balaka in the areas in question.⁹
10. The Prosecution is heavily reliant on P-1528’s claims regarding the alleged Anti-Balaka attack in CATTIN as evidence of the alleged attack against the civilian population, charged under Count 1.¹⁰
11. P-1528 is one of only two witnesses who specifically allege the killing of Muslims by the Anti-Balaka in CATTIN, relied on in the Prosecution Trial Brief.¹¹ In the First Statement, P-1528 describes overhearing the killing of a Muslim on [REDACTED], and claims to have later seen four armed Anti-Balaka elements standing over his body.¹² His evidence is also relied on for the Prosecution submission that ‘there is no indication that any of the victims [of the alleged killings underlying Count 1] were engaged in combat’.¹³

⁷ [ICC-01/14-01/18-723-Conf](#), VI., C., b), paras 367-368, fns 950-951, 957.

⁸ The conduct underlying Counts 1-6 is subsumed within Count 8 as charged.

⁹ [CAR-OTP-2048-0757-R05](#), para. 50.

¹⁰ [ICC-01/14-01/18-723-Conf](#), para. 396, fn. 1020; citing [CAR-OTP-2048-0757-R05](#), para. 30.

¹¹ [ICC-01/14-01/18-723-Conf](#), para. 396-397, fns. 1021-1023; see also, [ICC-01/14-01/18-572-Conf](#), para. 13, fn. 30.

¹² [CAR-OTP-2048-0757-R05](#), para. 31.

¹³ [ICC-01/14-01/18-723-Conf](#), para. 397, fn. 1023.

12. Further, P-1528 is the sole source for the Prosecution submission, made in the Document Containing the Charges¹⁴ and Trial Brief,¹⁵ and expressly cited by Pre-Trial Chamber II in its Decision confirming the charges,¹⁶ that ‘While retreating from CATTIN back to BOEING, members of YEKATOM’s Group shouted that they would first kill DJOTODIA, and then return to kill *all* Muslims.’¹⁷
13. P-1528’s disputed claim that Christians ‘were warned of an impending attack by the Anti-Balaka and were told to place a branch from a palm tree in front of their home’¹⁸ is likewise relied on by the Prosecution as evidence underlying Count 1.¹⁹
14. P-1528’s evidence is further relied on for his allegations regarding the attack on the BOEING market and the killing of Muslim traders, under Counts 2 and 3.²⁰ Notably, P-1528 makes the prejudicial claim that ‘After news of [the killing of the traders] spread, people started to leave’.²¹
15. P-1528’s extensive evidence regarding the fleeing [REDACTED] from CATTIN, to PK5 and subsequently outside CAR, and the dislocation of Muslims from BOEING and CATTIN generally, is also relied on by the Prosecution for its allegations underlying Counts 4 and 5.²² In this regard, the Prosecution expressly refers to P-1528 in its Trial Brief, stating that [REDACTED]’²³ The Statements contain information about BOEING and CATTIN residents fleeing on or after 5 December 2013; both in relation to specific individuals such as

¹⁴ [ICC-01/14-01/18-282-Conf-AnxB1](#), para. 247, fn. 561.

¹⁵ [ICC-01/14-01/18-723-Conf](#), para. 396, fn. 1022.

¹⁶ [ICC-01/14-01/18-403-Conf-Corr](#), para. 88, fn. 218.

¹⁷ [CAR-OTP-2048-0757-R05](#), para. 30.

¹⁸ [CAR-OTP-2048-0757-R05](#), para. 33.

¹⁹ [ICC-01/14-01/18-723-Conf](#), para. 395, fn. 1014.

²⁰ [ICC-01/14-01/18-723-Conf](#), para. 399, fn. 1024; citing [CAR-OTP-2048-0757-R05](#), para. 27; see also, [CAR-OTP-2121-2831-R01](#), para. 24.

²¹ [CAR-OTP-2121-2831-R01](#), para. 24.

²² [ICC-01/14-01/18-723-Conf](#), para. 401, fn. 1031; citing [CAR-OTP-2048-0757-R05](#), paras 39, 49; see also, paras 40, 46, 47, 48, 49, and 50, and [CAR-OTP-2121-2831-R01](#), paras 22-26.

²³ [ICC-01/14-01/18-723-Conf](#), para. 403, fns 1043; note that this submission is made in support of Count 6.

[REDACTE],²⁴ as well as, more broadly, his allegation that individuals left BOEING and CATTIN in two waves: first, a mixture of Muslim men, women and children left ‘because they were targeted’; and second, another group who left following Anti-Balaka banditry.²⁵ He also makes allegations regarding the destruction of Muslims’ homes in these neighbourhoods by the Anti-Balaka.²⁶

16. The Statements are also relied on as evidence underlying Count 6 – specifically, for P-1528’s evidence regarding the destruction of the Boeing Mosque.²⁷ Notably, [REDACTED] the location of the Mosque, where GPS coordinates, photographs and video were taken; the latter is relied on by the Prosecution in support of its submission in its Trial Brief that ‘All that is left of the mosque is a concrete slab where it stood’.²⁸
17. Lastly, P-1528’s allegations regarding the Anti-Balaka’s conduct in CATTIN on 5 December are also relied on by the Prosecution as evidence of the Anti-Balaka’s alleged ‘intention to target Muslim civilians violently and expel them from CAR’ further to the ‘organisational policy’ *chapeau* element of Article 7.²⁹

II. The Statements are insufficiently probative for introduction under Rule 68(3), and their probative value is outweighed by their prejudicial effect.

18. Compounding the prejudicial nature of P-1528’s heavily-relied-upon claims set out above is the fact that they are of dubious probative value.
19. As noted above, P-1528 makes several highly prejudicial, broad-brush claims regarding Mr Yekatom (erroneously promoted by P-1528 to ‘General’ Yekatom) including that he was ‘responsible for the crimes committed by the Anti-

²⁴ [CAR-OTP-2121-2831-R01](#), paras 10, 14.

²⁵ [CAR-OTP-2121-2831-R01](#), paras 22-23.

²⁶ [CAR-OTP-2048-0757-R05](#), paras 46-47, 62-63.

²⁷ [ICC-01/14-01/18-723-Conf](#), para. 403, fns 1042-1043.

²⁸ [CAR-OTP-2121-2831-R01](#), paras 27-28; see, ICC-01/14-01/18-723-Conf, para. 403, fn. 1042.

²⁹ [ICC-01/14-01/18-723-Conf](#), para. 174, fn. 481.

Balaka'; that he was 'controlling the Anti-Balaka in CATIN [sic], BOEING and all the way to BIMBO'; and that he was 'in charge of the Anti-Balaka that attacked BOEING on 5 December 2013 and this group was responsible for killings and the looting of houses'.³⁰

20. Yet he subsequently undermines these claims in stating, 'This is public knowledge and everyone knows that he was in charge of the Anti-Balaka in my neighbourhood';³¹ an assertion which, coupled with the lack of any specific information in his Statements supporting his claims regarding Mr Yekatom, indicate that these claims are not based on any direct, probative information, but instead comprise mere speculation and conjecture – as demonstrated further by his qualifying choice of wording, i.e. 'I believe'.³²
21. Indeed, the Chamber has received extensive evidence establishing that BOEING was a veritable stronghold of the Anti-Balaka from 5 December 2013 onward, where multiple groups were operating, each based in various locations within the neighbourhood and each led by different chiefs.³³
22. In this regard, the evidence of P-1528 demonstrates not only the problematic nature of factual assertions based on 'public knowledge', but also P-1528's readiness to rely on 'public knowledge' as the foundation for prejudicial, *ad hominem* accusations; both of which show the extent to which reliance on P-1528's Statements would be unsafe.
23. In a similar vein, P-1528's claim that on 5 December 2013 Anti-Balaka elements chased down, caught and killed a Muslim man in the road [REDACTED] in CATTIN, despite being disputed and central to core issues as set out above, is

³⁰ [CAR-OTP-2048-0757-R05](#), para. 50.

³¹ [CAR-OTP-2048-0757-R05](#), para. 51.

³² [CAR-OTP-2048-0757-R05](#), para. 50.

³³ See e.g., (P-2232) ICC-01/14-01/18-T-079-CONF-FRA, pp 19-20; (P-0884) ICC-01/14-01/18-T-057-CONF-FRA, pp 19-22; (P-0808) ICC-01/14-01/18-T-072-FRA ET, p. 39-41; see also, sketch depicting various Anti-Balaka bases in BOEING, (P-0889) [CAR-OTP-2027-2311](#).

of extremely limited probative value. P-1528 did not in fact witness the alleged killing; instead, he based this claim on his overhearing an attack, and the fact that he 'later saw four Anti-Balaka elements standing next to his body'.³⁴ Prosecution investigators appear to have failed to inquire further as to how much later in time he actually saw this scene, despite this information being of critical importance to the reliability of the inference drawn by P-1528 as to who was responsible for the killing.³⁵

24. P-1528's evidence regarding the destruction of the Boeing Mosque is likewise of low probative value. P-1528 did not witness the destruction of the Mosque himself, [REDACTED];³⁶ [REDACTED].³⁷ He learned of the destruction of the Mosque from [REDACTED], who himself was also not a witness thereto, and who in turn received this information from anonymous 'Christian neighbours'.³⁸ P-1528 only ever saw photographs of the Mosque with doors and windows gone, on the mobile phone of an anonymous individual; he did not see video footage of the destruction.³⁹
25. P-1528 [REDACTED], stating he 'believe[d] the compound was initially damaged and looted of all the valuables by the Anti-Balaka and then later the local population came and looted the buildings'; again, Prosecution investigators do not appear to have inquired as to the basis for this belief, despite the potential importance of this information.⁴⁰ P-1528 also claims that the Anti-Balaka 'deliberately cut down all the fruit trees' [REDACTED], which he 'assume[s] [...] was an act of vandalism to convey a message that we could

³⁴ [CAR-OTP-2048-0757-R05](#), para. 31.

³⁵ [CAR-OTP-2048-0757-R05](#), paras 31.

³⁶ [CAR-OTP-2121-2831-R01](#), para. 14.

³⁷ [CAR-OTP-2121-2831-R01](#), paras 13, 18.

³⁸ [CAR-OTP-2121-2831-R01](#), para. 14; in the First Statement, P-1528 states that he also learned of the destruction of the Mosque from [REDACTED], who himself is also not purported to be a direct witness, having 'fled BOEING during the events of 5 December 2013'; see, [CAR-OTP-2048-0757-R05](#), para. 47, and [CAR-OTP-2121-2831-R01](#), para. 14

³⁹ [CAR-OTP-2121-2831-R01](#), para. 15.

⁴⁰ [CAR-OTP-2048-0757-R05](#), para. 63.

not return there’.⁴¹ The basis for P-1528’s blaming of the Anti-Balaka in this regard is unspecified, which is notable given that he did not himself witness the looting and destruction of [REDACTED];⁴² likewise, the basis for his assumption as to the motive behind the act.

26. Further, P-1528’s hearsay evidence regarding the killing of seven Muslim traders at the BOEING Market [REDACTED], as well as from other unnamed sources.⁴³ In his second Statement, he again provides hearsay evidence regarding the killing of the Muslim traders, this time naming [REDACTED].⁴⁴
27. Further, while not expressly relied on in the charging documents, the Statements contain a range of prejudicial, low-probative-value allegations in addition to those set out above, which should be considered in the Chamber’s broader assessment as to whether introduction of the Statements would be prejudicial to the fairness of these proceedings. In this regard, these allegations, like those set out above, must also be read alongside his broad-brush claims regarding Mr Yekatom’s responsibility and control of the Anti-Balaka in BOEING and CATTIN.
28. For instance, P-1528 [REDACTED] after having received ‘information that the Anti-Balaka were going to attack [REDACTED] and others Muslims [sic] that remained in the neighbourhood’ – however no details regarding the source of this information is provided, nor do Prosecution investigators appear to have inquired in relation thereto.⁴⁵ In a similar vein, he states that ‘All of the people [REDACTED] left at the same time I called’ – yet no details regarding these neighbours’ identities are provided.⁴⁶

⁴¹ [CAR-OTP-2048-0757-R05](#), para. 62.

⁴² See, [CAR-OTP-2048-0757-R05](#), paras 47 (‘Approximately two weeks after the 5th December 2013 attack a neighbour called me and told me that all out homes had been looted.’); and 53 (‘I returned to [REDACTED] in CATIN [sic] on the 26th December 2016 to find it totally looted and mostly destroyed’).

⁴³ [CAR-OTP-2048-0757-R05](#), paras 29-29.

⁴⁴ [CAR-OTP-2121-2831-R01](#), para. 24.

⁴⁵ [CAR-OTP-2121-2831-R01](#), para. 26.

⁴⁶ [CAR-OTP-2121-2831-R01](#), para. 26.

29. Further, P-1528 makes a number of claims regarding the Anti-Balaka's conduct prior to the 5 December attack, allegedly received from a now-deceased individual simply referred [REDACTED].⁴⁷ These claims include: that the Anti-Balaka from BOSSANGO were gathered in DANA and were receiving training in preparation for the attack; that Anti-Balaka elements were scouting in BANGUI; and that the Anti-Balaka had held a meeting with members of the FACA and gendarmerie, in preparation for the 5 December attack, during which firearms, grenades and gas canisters were distributed, and the Anti-Balaka were given instructions to 'attack all Muslim houses'.⁴⁸ The prejudice inherent in these claims is unduly compounded by the fact that it remains unverifiable and insufficiently sourced, [REDACTED].⁴⁹ No indication as to how [REDACTED] learned this information is provided, despite the fact that information regarding a pre-5 December Anti-Balaka meeting would presumably comprise a highly guarded secret. Nor is the Defence able to effectively investigate these claims, given P-1528's inability to specify where the meeting was held, or the name of any attendees, as well as the fact that according to P-1528, [REDACTED].⁵⁰
30. In a similar vein, the Statement contains further prejudicial, low-probative value allegations, including: the looting of a Muslim home in CATTIN by the Anti-Balaka, for which the source of this information is unspecified;⁵¹ a hearsay account of the targeted killing of a Muslim family member by the Anti-Balaka in BOEING;⁵² the claim, 'heard through the media,' that 'the Anti-Balaka were killing Muslims in BOSSANGO';⁵³ and information that after the 5 December attack, the Anti-Balaka 'were planning to return and kill all Muslims in the

⁴⁷ [CAR-OTP-2048-0757-R05](#), para. 22-25.

⁴⁸ [CAR-OTP-2048-0757-R05](#), paras 22-25.

⁴⁹ [CAR-OTP-2048-0757-R05](#), para. 22.

⁵⁰ [CAR-OTP-2048-0757-R05](#), paras 22-23, 25.

⁵¹ [CAR-OTP-2048-0757-R05](#), para. 46.

⁵² [CAR-OTP-2048-0757-R05](#), paras 41-45.

⁵³ [CAR-OTP-2048-0757-R05](#), para. 26.

area', heard by P-1528 from his anonymous Christian neighbour, who had heard this from her husband, who had himself heard this from other unnamed sources.⁵⁴

III. The probative value of the Statements is negatively impacted by P-1528's affiliation with the Seleka and bias against the Anti-Balaka.

31. As the Chamber heard during the recent testimony of Prosecution witness P-0475, P-1528 [REDACTED].⁵⁵
32. According to a 6 October 2014 *Bulletin spéciale de renseignement* from the *Direction des services de police administrative*, addressed to the Minister of Public Security and Immigration, and copied to the French Ambassador, the 'Texas' Muslim militia group was responsible for violence, exactions on civilians, pillaging, destruction of property, and for 'maintaining a climate of terror' in the 5th and 3rd Arrondissements of Bangui.⁵⁶ As confirmed by P-0475, 'Texas' in turn controlled 28 subordinate Muslim armed groups.⁵⁷ According to the *Bulletin*, [REDACTED].⁵⁸
33. The *Bulletin* further specifies that shortly after its creation on 24 February 2014,⁵⁹ announced by Central Mosque Deputy Imam Bachir MODIBO at a press conference – as corroborated by P-0475 in his statement⁶⁰ – the 'Texas' militia group, alongside the Seleka, engaged in hostilities against the Anti-Balaka in neighbourhoods across Bangui.⁶¹ The link between 'Texas' and the Seleka is further demonstrated by the prevalence of Seleka-affiliated individuals among its leadership.⁶²

⁵⁴ [CAR-OTP-2048-0757-R05](#), paras 35.

⁵⁵ ICC-01/14-01/18-T-090-CONF-FRA, pp 78-81; ICC-01/14-01/18-T-091-CONF-FRA, pp 3-4.

⁵⁶ [CAR-OTP-2003-1654](#), at 1755.

⁵⁷ ICC-01/14-01/18-T-090-CONF-FRA, pp 80-81.

⁵⁸ [CAR-OTP-2003-1654](#), at 1756.

⁵⁹ While the *Bulletin* states that the group was founded on 24 February 2013, it is submitted that this is a typographical error.

⁶⁰ [CAR-OTP-2104-0116-R03](#), para. 98.

⁶¹ [CAR-OTP-2003-1654](#), at 1756.

⁶² [CAR-OTP-2003-1654](#), at 1755,

34. In this regard, the Chamber will also recall receiving P-0475's evidence regarding weapons in the Central Mosque in the 3rd Arrondissement, and regarding the broader phenomenon of imams 'choosing the side of the Seleka' during the crisis, contrary to the urging of the President of the Islamic Community.⁶³
35. In light of the evidence indicating that P-1528 [REDACTED] there is the real risk that he was, and remains, motivated by anti-Anti-Balaka bias in his cooperation with the Prosecution, which negatively impacts the probative value of his Statements and further renders their introduction under Rule 68(3) unsafe.⁶⁴
36. Further indications of this bias can be found in the Statements. With the exception [REDACTED], and a search of his neighbour's home, the Statements are silent on the extensively documented atrocities committed by the Seleka during its regime. Any suggestion that he was not aware of specific Seleka crimes would be at odds with his own claim that he would receive information about the Anti-Balaka because of [REDACTED].⁶⁵ His statement, that 'for me, from the 5 December 2013, it became a religious conflict', likewise demonstrates an unwillingness to recognise the conduct of the Seleka following the March 2013 coup d'état and their responsibility in the violence that ensued.⁶⁶
37. Likewise, in the Statements, P-1528 expresses his 'shock' as regards what he views as betrayal by his neighbours who failed to warn him of the Anti-Balaka advance:

[REDACTED].⁶⁷

⁶³ [CAR-OTP-2104-0116-R03](#), paras 35-37, 98.

⁶⁴ See also, [ICC-01/14-01/18-1088-Conf](#), paras 15-16.

⁶⁵ [CAR-OTP-2048-0757-R05](#), para. 22.

⁶⁶ [CAR-OTP-2121-2831-R01](#), para. 21.

⁶⁷ [CAR-OTP-2121-2831-R01](#), para. 19.

38. Yet the Chamber will recall the broader evidence heard to date of Seleka atrocities across Bangui which, on the Prosecution's own case, led to the birth of the self-defence groups making up the Anti-Balaka, and more broadly, to anti-Muslim animus among the broader population.⁶⁸ More specifically, the Chamber will recall the evidence of P-0475 – like P-1528, [REDACTED] – regarding the President of the Islamic Community, Imam KOBINE, who personally asked President DJOTODIA to tell the Seleka to stop 'brutally attacking and targeting the non-Muslim population', and that in this regard DJOTODIA had placed CAR Muslims in a very dangerous position, employing the metaphor of a coal pit above which the CAR Muslim community had been placed, on twigs and sticks.⁶⁹ In light of this evidence, P-1528's claim of 'shock' – assuming it were made in good faith – is somewhat difficult to fathom; especially given P-0475's evidence that [REDACTED], [REDACTED], to denounce the actions of the Seleka, which they refused to do.⁷⁰
39. Lastly, P-1528's [REDACTED] – and by extension, the Seleka – should also be considered when assessing the impact of the hearsay nature of his evidence: specifically, on the sources [REDACTED].

IV. The estimated time saved is minimal and in any event is outweighed by the prejudicial effect of the formal submission of the Statements.

40. As conceded in the Request, the Prosecution's estimate as to the time saved should the Request be granted amounts to a mere two hours – i.e. little more than one session.⁷¹
41. Contrary to the Request, the projected shortening of the testimony of P-1528 by two hours is negligible; and in any event, is far from 'considerable'.⁷² By way

⁶⁸ [ICC-01/14-01/18-723-Conf](#), para. 66.

⁶⁹ [CAR-OTP-2104-0116-R03](#), para. 206.

⁷⁰ [CAR-OTP-2104-0116-R03](#), para. 36.

⁷¹ [ICC-01/14-01/18-1266-Conf](#), paras 17-19.

⁷² *Contra*, [ICC-01/14-01/18-1266-Conf](#), para. 20.

of comparison, the Defence recalls that Chamber's most recent decision on Prosecution Rule 68(3) requests involved time savings of seven hours (for P-0992), five hours (for P-0446); three hours (for P-0888 – which request was unopposed); and six hours (for P-0889).⁷³

42. Further recalling that the aim underlying the Rule 68(3) procedure is the promotion of the expeditiousness of the proceedings;⁷⁴ the Defence respectfully submits that it cannot be reasonably argued that the projected time-saving of a mere two hours would meaningfully advance this cause.
43. In any event, what little might be gained in expeditiousness would not outweigh the prejudice that would be occasioned to Mr Yekatom's fair trial rights by the introduction of the Statements via Rule 68(3), as set out above.⁷⁵
44. Lastly, the Defence notes that the photographs and video tendered as Associated Exhibits can be submitted via the witness – as opposed to via Rule 68(3) – in a manner that nonetheless promotes the expeditiousness of the proceedings. In this regard, recalling the 'photobook' procedure prepared for Prosecution witness P-1577,⁷⁶ the Defence would not oppose such a procedure in relation to P-1528's photographs and videos.

CONFIDENTIALITY

45. This response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version will be filed forthwith.

RELIEF SOUGHT

46. In light of the above, the Defence respectfully requests that Trial Chamber V:

⁷³ See, [ICC-01/14-01/18-1226-Conf](#), paras 12, 15, 20, 23, 25, 28 and 30.

⁷⁴ See, [Gbagbo & Blé Goudé Judgment](#), paras 60-61.

⁷⁵ See, [Gbagbo & Blé Goudé Judgment](#), para. 62.

⁷⁶ See, Email from Trial Chamber V to Parties, 23 April 2021 at 15.00.

DENY the Request.

RESPECTFULLY SUBMITTED ON THIS 17th DAY OF FEBRUARY 2022



Me Mylène Dimitri
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